Insaf Tegas Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO R1–14–14–10 OF 2013
ASMABI MOHAMAD J
18 AUGUST 2015

Revenue Law — Corporation tax — Appeal against assessment — Appellant filed notice of appeal requiring Special Commissioners of Income Tax ('SCIT') to state case stated for opinion of High Court under para 34 of Schedule 5 of the Income Tax Act 1967 — Appellant dissatisfied with case stated by SCIT and filed application pursuant to para 40(b) of Schedule 5 of the ITA to require SCIT to find further facts — Income Tax Act 1967 Schedule 5 paras 34, 37 & 40(b)

The Special Commissioners of Income Tax ('SCIT') had heard an appeal by the appellant against the notice of assessment for the year of assessment 2004 and dismissed the same. Dissatisfied with the decision, pursuant to para 34 of Schedule 5 of the Income Tax Act 1967 ('the ITA'), the appellant filed a notice of appeal requiring the SCIT to state a 'case stated' for the opinion of the High Court. The SCIT then issued the 'case stated' as applied by the appellant, nevertheless, the appellant was dissatisfied with the 'case stated' and filed the present action vide encl 4 under para 40(b) of Schedule 5 of the ITA. Under encl 4, the appellant had sought for the court to require the SCIT to find further facts and state a supplementary case as identified by the appellant in its letter to SCIT dated 24 April 2013 ('the said letter'). The appellant submitted that the facts contained in the said letter were part of the appellant's legal submission and relevant for the purpose of determining the issues between the parties during the appeal. The issue for determination was whether the High Court should order the SCIT to find further facts and to state supplementary case in light of the appellant's application.

Held, dismissing encl 4 with costs of RM4,000:

(1) Based on decided cases and paras 34, 37 and 40(b) of Schedule 5 of the ITA, the appellant could not impose the evidence, facts or contention found by the appellant in the said letter on the SCIT as the finding of facts were within the realm of SCIT. It is a statutory duty imposed upon the SCIT in an appeal by way of case stated to set out the facts as found by the SCIT and the deciding order but not the evidence on which findings were based (see paras 13, 17 & 21).

[Bahasa Malaysia summary

Suruhanjaya Khas Cukai Pendapatan ('SKCP') telah mendengar rayuan oleh perayu terhadap notis penaksiran bagi Tahun Penaksiran 2004 dan menolaknya. Tidak puas hati dengan keputusan tersebut, berikutan perenggan 34 Jadual 5 Akta Cukai Pendapatan 1967 ('ACP'), perayu memfailkan notis rayuan mengkehendaki SKCP menyatakan 'case stated' bagi pandangan Mahkamah Tinggi. SKCP kemudiannya mengeluarkan 'case stated' seperti yang dipohon oleh perayu, walau bagaimanapun, perayu tidak puas hati dengan 'case stated' dan memfailkan tindakan ini melalui lampiran 4 di bawah perenggan 40(b) Jadual 5 ACP. Di bawah lampiran 4, perayu telah memohon untuk mahkamah meminta SKCP mendapatkan fakta lanjut dan menyatakan kes tambahan seperti yang dikenal pasti oleh perayu dalam suratnya kepada SKCP bertarikh 24 April 2013 ('surat tersebut'). Perayu berhujah bahawa fakta yang terkandung dalam surat tersebut adalah sebahagian hujahan undang-undang perayu dan relevan bagi tujuan menentukan isu-isu di antara pihak-pihak semasa rayuan. Isu untuk penentuan adalah sama ada Mahkamah Tinggi patut perintah SKCP untuk mendapatkan fakta lanjut dan untuk menyatakan kes tambahan berdasarkan permohonan perayu.

Diputuskan, menolak lampiran 4 dengan kos sebanyak RM4,000:

(1) Berdasarkan kes-kes yang diputuskan dan perenggan 34, 37 dan 40(b) Jadual 5 ACP, perayu tidak dapat menguatkuasakan keterangan, fakta atau hujahan yang didapati oleh perayu dalam surat tersebut ke atas SKCP kerana dapatan fakta adalah dalam bidang kuasa SKCP. Ia adalah kewajipan statutori yang dikenakan ke atas SKCP di dalam rayuan melalui kes yang dinyatakan untuk menetapkan fakta seperti yang didapati oleh SKCP dan perintah yang diputuskan tetapi bukan keterangan atas dapatan yang mana didasarkan (lihat perenggan 13, 17 & 21).]

Notes

For a case on appeal against assessment, see 10(2) *Mallal's Digest* (5th Ed, 2015) para 2425.

Cases referred to

Chua Lip Kong v Director-General of Inland Revenue [1982] 1 MLJ 235, PC (refd)

Commissioners of Inland Revenue v Tootal Broadhurst Lee Co, Ltd (1949) 29 TC 352, KBD (refd)

Consolidated Goldfields plc v Inland Revenue Commissioners; Gold Fields Mining and Industrial Ltd v Inland Revenue Commissioners [1990] 2 All ER 398; [1990] STC 357, Ch D (refd)

E v Comptroller-General of Inland Revenue [1970] 2 MLJ 117, FC (refd)

Kenny Heights Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri

[2015] 4 MLJ 487; [2015] 5 CLJ 923, CA (refd)
North British & Mercantile Insurance Company v A Easson (Surveyor of Taxes), The (1919) 7 TC 463 (refd)
NTS Arumugam Pillai v Director-General of Inland Revenue [1977] 1 MLJ 67 (refd)
Russell v Inland Revenue Commissioners; Inland Revenue Commissioners v Russell [1944] 2 All ER 192; (1944) 26 TC 242, CA (refd)
Sincere Leasing Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2000] 3 MLJ 163; [2000] 2 AMR 2050, CA (folld)
UHG v Director General of Inland Revenue [1974] 2 MLJ 33, FC (refd)

Legislation referred to

Income Tax Act 1967 Schedule 5, paras 34, 37, 40, 40(b)

DP Naban (Jason Tan with him) (Lee Hishamuddin Allen & Gledhill) for the appellant.
Abdul Aziz bin Harun (Mohd Fazli Lutfi bin Latiff with him) (Senior Revenue Counsel, Legal Department) for the respondent.

Asmabi Mohamad J:

INTRODUCTION

[1] By the notice of application dated 3 March 2014 ('encl 4'), the appellant has sought for the High Court to require the Special Commissioners of Income Tax ('SCIT') to find further facts and state a supplementary case pursuant to para 40(b) of the Schedule 5 of the Income Tax Act 1967 ('the ITA'). These further facts which the appellant required to be stated in a supplementary case were as identified in the appellant's letter to the SCIT's office dated 24 April 2013.

[2] According to the appellant the case stated prepared by the SCIT did not contain sufficient and adequate facts to assist the court in determining the material facts and evidence established during the hearing held on 25 July 2012 and 26 July 2012 respectively. As these material facts were part of the appellant's skeleton submission before the SCIT, the appellant was entitled to expect the SCIT to state the same in the case stated to enable the appellant to fully ventilate the issues before the High Court when pursuing its appeal to the High Court.

BACKGROUND FACTS

[3] The facts leading to the filing of encl 4 could be summarised as follows:

(a) the SCIT had heard an appeal filed by the appellant against the notice of assessment for the year of assessment 2004 ('the appeal');

(b) by way of a deciding order dated 13 December 2012, the SCIT had dismissed the appeal. Aggrieved by the said decision the appellant had filed a notice of appeal dated 4 January 2013 requiring the SCIT to state a case stated for the opinion of the High Court under para 34 of Schedule 5 of the ITA;

(c) vide a letter dated 3 April 2013, both the appellant and the respondent were requested to comment on the draft of the case stated by SCIT. Both parties had reverted to the SCIT stating their views and comments;

(d) the SCIT then issued a faired and signed case stated dated 1 October 2013 to both parties; and

(e) the appellant being dissatisfied with the faired and signed copy of the case sated then filed encl 4 under sub-para 40(b) of Schedule 5 of the ITA.

CAUSE PAPERS

[4] For the purpose of encl 4 the following documents were filed herein and considered by the court:

(a) the affidavit in support affirmed by Saravana Kumar a/l Segaran on 3 March 2014 (encl 5);

(b) affidavit in reply affirmed by Abdul Aziz bin Harun on 9 May 2014 (encl 8);

(c) affidavit in reply affirmed by Saravana Kumar a/l Segaran on 27 May 2014 (encl 9); and

(d) additional affidavit affirmed by Saravana Kumar a/l Segaran on 2 March 2015 (encl 16).

THE GROUNDS

[5] The grounds for the application were as follows:

(a) the additional facts contained in the letter dated 24 April 2013 were material facts and the evidence established during the hearing held on 25 July 2012 and 26 July 2012 respectively. These material facts were part of the appellant's legal submission and relevant for the purpose of determining the issues between parties during the appeal;

(b) the material facts were based on the oral and documentary evidence led before the SCIT and not new facts;

(c) the inclusion of these additional facts will state the material facts and evidence established before the SCIT which were relevant for the purpose of the appeal in the High Court and not in any way inconsistent with the findings of the SCIT; and

(d) further grounds were as stated in the affidavit of Saravanan Kumar a/l Segaran affirmed on 3 March 2014 (encl 5).

THE ISSUE

[6] There is only one issue for determination as follows:

Whether the High Court should order the Special Commissioners of Income Tax ('SCIT') to find further facts and to state a supplementary case in light of the application made by the Appellant.

DISCUSSIONS OF THE ISSUE AND DECISION OF THE COURT

[7] Enclosure 4 was made pursuant to para 40 of Schedule 5 of the ITA which states as follows:

At any time before it determines the question of law arising on a case stated under paragraph 34, the high Court may —

(a) Cause the case to be sent back to the Special Commissioners for amendment; or

(b) Require the Special commissioners to find further facts and state a supplementary case.

And may postpone or adjourn the proceedings before it until the amendment has been made or requisition complied with.

[8] In order to answer the issue posed for this court's determination, I have sought guidance from the case of *Sincere Leasing Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2000] 3 MLJ 163; [2000] 2 AMR 2050, where the Court of Appeal had approved the guidelines enunciated in the case of *Consolidated Goldfields plc v Inland Revenue Commissioners; Gold Fields Mining and Industrial Ltd v Inland Revenue Commissioners* [1990] 2 All ER 398; [1990] STC 357 on a matter remitting a case stated to the SCIT as follows:

(i) The findings of facts are for the Commissioners. They cannot be instructed to find facts, nor as to the manner in which they express their findings.

(ii) The parties are entitled to expect that the commissioners will in the case stated make findings covering the matters which are relevant to the arguments adduced or intended to be adduced on appeal.

(iii) If a request is made for a case stated to be remitted for additional findings to be made or to be considered, the applicant must, in my opinion, show

A that the desired findings are (a) material to some tenable argument, (b) at least reasonably open on the evidence that has been adduced and (c) not inconsistent with the finding or findings that have already been made.

B **[9]** Subparagraph 40(b) of Schedule 5 to the ITA lays down the scope and limit of the High Court's power to remit the case stated to the SCIT only for the purpose of amendments or requiring the SCIT to find further facts in a supplementary case stated.

C **[10]** Paragraph 34 of Schedule 5 to the ITA provides:

> Either party to the proceedings before the Special Commissioners may appeal on a question of law against a deciding order made in those proceedings (including a deciding order made pursuant to paragraph 26(b) or (c)) by requiring the Special Commissioners to state a case for the opinion of the High Court and by paying to
D the Clerk at the time of making the requisition such fees as may be prescribed from time to time by the Minister in respect of each deciding order against which he seeks to appeal.

[11] The basic requirements for the preparation of a case stated had been set
E out in para 37 of Schedule 5 to the ITA as follows:

> 37 A case stated under paragraph 34 —
>
> (a) Shall set forth the facts as found by the Special Commissioners, the deciding order and the grounds of decision; and
>
> F (b) Shall be signed by the Special Commissioners who heard the appeal (or, if any of them are incapacitated from signing by reason of death, illness, absence or other cause, by such of them as able to do so).

G **[12]** In *Chua Lip Kong v Director-General of Inland Revenue* [1982] 1 MLJ 235 the court had decided as follows:

> Findings of primary facts by the Special Commissioners are unassailable. They can be neither be overruled or supplanted by the High Court itself, occasionally where may be insufficient to enable the High Court to decide the question of law sought
H to be raised by the case stated, but in that event it will be necessary for the case stated to be remitted to the Commissioners themselves for further findings.

[13] In view of the aforesaid and upon the reconciliations of the decisions of the court as well as paras 34, 37 and 40(b) of Schedule 5 of the ITA the SCIT
I are entrusted with the jurisdiction to determine what facts and evidence are to be included in the case stated pursuant to their findings. Hence the appellant may only make an application to have the case stated remitted for the Commissioners to find further facts, but not to impose on the Commissioners evidence, facts or contentions as found by the appellant.

[14] Further in a case stated unlike a judgment of the court, the appeal is only on point of law. Therefore the full evidence recorded before the Special Commissioners would not be transmitted to the High Court but merely the findings of the SCIT based on the evidence before him. It has been stated in the case of *UHG v Director General of Inland Revenue* [1974] 2 MLJ 33 the duty of the Special Commissioners is to set out the facts as found by him and the deciding order but not the evidence on which he based his findings as the High Court is not concerned with the evidence given before the Special Commissioners but the court has to decide the points of law upon the facts decided by the Special Commissioners.

[15] In *NTS Arumugam Pillai v Director-General of Inland Revenue* [1977] 1 MLJ 67 the court ruled that ordinarily the statement of case does not include evidence and/or the notes of evidence recorded verbatim. It merely stated the facts as found by the Special Commissioners. The same was decided in *E v Comptroller-General of Inland Revenue* [1970] 2 MLJ 117 where the court had ruled that the duty of the Commissioners was only to draw conclusion from the facts presented before them and a verbatim statement of the evidence without indicating plainly how far they accepted or rejected those facts are not relevant.

[16] Based on the above it is clear that only findings of facts are required and not verbatim statement of the evidence. Therefore the appellant's application to include verbatim statement of the evidence as could be seen in exh 'SKS17' and exh 'SKS18' of the appellant's supplementary affidavit are without any merits.

[17] A perusal of the comments of the appellant in the letter dated 24 April 2012 would appear to be contrary to the decision of the SCIT and tantamount to introducing evidence of witnesses into the case stated which they are not permitted to do so in a case stated.

[18] The SCIT had given their reasons in exh 'SKS11' to encl 2. Amongst others, the views of the SCIT were that the comments by the appellant on the draft were contradictory to the decision of the SCIT and that the suggestions made by the appellant to be stated in the case stated were evidence of witnesses before the SCIT which should not be included in the case stated for the reasons I have mentioned herein.

[19] The duty of the SCIT under the ITA is to hear the evidence of witnesses and convert the evidence into primary facts after the assessment of the evidence. In the course of that, the SCIT is entitled to accept or reject the evidence and to draw inferences from these facts. Only facts found proven by the SCIT are relevant for the purpose of the case stated (see *The North British & Mercantile Insurance Company v A Easson (Surveyor of Taxes)* (1919) 7 TC

463; *Russell v Inland Revenue Commissioners; Inland Revenue Commissioners v Russell* [1944] 2 All ER 192; (1944) 26 TC 242).

[20] At the end of the day it is not necessarily the duty of the Special Commissioners to adopt the corrected version of the case stated after the same had been sent for corrections but only to consider any suggestions for amendment that have been made (see *Commissioners of Inland Revenue v Tootal Broadhurst Lee Co, Ltd* (1949) 29 TC 352).

[21] Upon perusal of exh 'SKS4' annexed to encl 5, I found that what the appellant proposed to do vide encl 4 was to impose on the SCIT the evidence, facts or contention found by the appellant. Guided by the high authorities stated above and upon considering exh 'SKS11' I am of the view that the appellant could not impose the same on the SCIT as the finding of facts are within the realm of the SCIT. It is a statutory duty imposed upon the SCIT in an appeal by way of case stated to set out the facts as found by the SCIT and the deciding order but not the evidence on which findings were based. The court reminded itself to the caution made by Court of Appeal in the case of *Kenny Heights Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2015] 4 MLJ 487; [2015] 5 CLJ 923 in which the court held that:

> [25] Courts must also bear in mind the SCIT's specialisation. Dealing with terms and practises of the business and the business community enables them to have a special insight, *understanding and appreciation of the evidence and facts, to make the findings drawn from those evidence and facts. While a finding of fact often touches upon the law, the determining factor in the finding is their special insight and appreciation of the facts*. Hence, unless it is demonstrated that SCIT had erred on a question of law, resulting in a manifest error in the deciding order, the court cannot intervene, as it would amount to interference contrary to the intent of legislation setting up and empowering the SCIT. (See *Lower Perak Co-Operative Housing Society Bhd v Ketua Pengarah Hasil Dalam Negeri* [1994] 2 MLJ 713; [1994] 3 CLJ 541 (SC)).

CONCLUSION

[22] In view of the aforesaid I refused to grant the prayers sought by the appellant vide encl 4 with costs of RM4,000 to be paid by the appellant to the respondant.

Enclosure 4 dismissed with costs of RM4,000.

Reported by Dzulqarnain Ab Fatar